

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DAVID M. KRAM,

Plaintiff,

VS.

NATIONAL RAILROAD PASSENGER CORPORATION a/k/a AMTRAK, a District of Columbia corporation,

Defendants.

CASE NO. 2:20-cv-02177-MCE-KJN

Complaint filed: 10/29/20

Trial Date: not set

STIPULATED CONFIDENTIALITY ORDER

COME NOW plaintiff, DAVID M. KRAM, and defendant, NATIONAL RAILROAD PASSENGER CORPORATION, doing business as AMTRAK (hereinafter “Amtrak”), by and through their respective counsel, and stipulate to the Court signing and entering this Stipulated Confidentiality Order.

1. Scope. All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively “documents”), shall be subject to this Order concerning Confidential Information as defined below. This Order is subject to the Local Rules of this Court and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. Confidential Information. As used in this Order, “Confidential Information” means information designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” by the

1 producing party. Information or documents that are available to the public may not be designated as
2 Confidential Information.

3 **3. Designation.**

4 a. A party may designate a document as Confidential Information for protection under this
5 Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER”
6 on the document and on all copies in a manner that will not interfere with the legibility of the
7 document. As used in this Order, “copies” includes electronic images, duplicates, extracts, summaries
8 or descriptions that contain the Confidential Information. The marking “CONFIDENTIAL -
9 SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or at the time of the documents are
10 produced or disclosed. Applying the marking “CONFIDENTIAL - SUBJECT TO PROTECTIVE
11 ORDER” to a document does not mean that the document has any status or protection by statute or
12 otherwise except to the extent and for the purposes of this Order. Any copies that are made of any
13 documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall also be so
14 marked, except that indices, electronic databases or lists of documents that do not contain substantial
15 portions or images of the text of marked documents and do not otherwise disclose the substance of the
16 Confidential Information are not required to be marked.

17 b. The designation of a document as Confidential Information is a certification by an
18 attorney that the document contains Confidential Information as defined in this order.

19 **4. Depositions.**

20 Unless all parties agree on the record at the time the deposition testimony is taken, all
21 deposition testimony taken in this case shall be treated as Confidential Information until the expiration
22 of the following: No later than the fourteenth (14) days after the transcript is delivered to any party or
23 the witness, and in no event later than 60 days after the testimony was given. Within this time period, a
24 party may serve a Notice of Designation to all parties of record as to specific portions of the testimony
25 that are designated Confidential Information, and thereafter only those portions identified in the Notice
26 of Designation shall be protected by the terms of this Order. The failure to serve a timely Notice of
27 Designation shall waive any designation of testimony taken in that deposition as Confidential
28 Information, unless otherwise ordered by the Court.

1 **5. Protection of Confidential Material.**

2 **a. General Protections.** Confidential Information shall not be used or disclosed by the
3 parties, counsel for the parties or any other persons identified in subparagraph (b) for any purpose
4 whatsoever other than in this litigation, including any appeal thereof.

5 **b. Limited Third-Party Disclosures.** The parties and counsel for the parties shall not
6 disclose or permit the disclosure of any other Confidential Information to any third person, party or
7 entity except as set forth in subparagraphs (1)-(9). Subject to these requirements, the following
8 categories of persons may be allowed to review Confidential Information:

9 **(1) Counsel.** Counsel for the parties and employees of counsel who have responsibility
10 for the action;

11 **(2) Parties.** Individual parties and employees of a party but only to the extent counsel
12 determines in good faith that the employee's assistance is reasonably necessary to the conduct
13 of the litigation in which the information is disclosed;

14 **(3) The Court and its personnel;**

15 **(4) Court Reporters and Recorders.** Court reporters and recorders engaged for
16 depositions;

17 **(5) Contractors.** Those persons specifically engaged for the limited purpose of making
18 copies of documents or organizing or processing documents, including outside vendors hired to
19 process electronically stored documents;

20 **(6) Consultants and Experts.** Consultants, investigators, or experts employed by the
21 parties or counsel for the parties to assist in the preparation and trial of this action but only
22 after such persons have completed the certification contained in Attachment A,
23 Acknowledgment of Understanding and Agreement to Be Bound;

24 **(7) Witnesses at depositions.** During their depositions, witnesses in this action to
25 whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents
26 containing Confidential Information, except witnesses may receive a copy of all exhibits
27 marked at their depositions in connection with review of the transcripts. Pages of transcribed
28 deposition testimony or exhibits

1 to depositions that are designated as Confidential Information pursuant to the process
2 set out in this Order must be separately bound by the court reporter and may not be disclosed to
3 anyone except as permitted under this Order.

4 **(8) Author or recipient.** The author or recipient of the document (not including a
5 person who received the document in the course of litigation); and

6 **(9) Others by Consent.** Other persons only by written consent of the producing party
7 or upon order of the Court and on such conditions as may be agreed or ordered.

8 **c. Control of Documents.** Counsel for the parties shall make reasonable efforts to prevent
9 unauthorized or inadvertent disclosure of Confidential Information. Counsel shall maintain the
10 originals of the forms signed by persons acknowledging their obligations under this Order for a period
11 of three years after the termination of the case.

12 **6. Inadvertent Failure to Designate.** An inadvertent failure to designate a document as
13 Confidential Information does not, standing alone, waive the right to so designate the document;
14 provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as
15 required by this Order, even if inadvertent, waives any protection for deposition testimony. If a party
16 designates a document as Confidential Information after it was initially produced, the receiving party,
17 on notification of the designation, must make a reasonable effort to assure that the document is treated
18 in accordance with the provisions of this Order. No party shall be found to have violated this Order for
19 failing to maintain the confidentiality of material during a time when that material has not been
20 designated Confidential Information, even where the failure to so designate was inadvertent and where
21 the material is subsequently designated Confidential Information.

22 **7. Filing of Confidential Information.** This Order does not, by itself, authorize the filing
23 of any document under seal. Any party wishing to file a document designated as Confidential
24 Information in connection with a motion, brief or other submission to the Court must comply with the
25 Local Rules.

26 **8. No Greater Protection of Specific Documents.** Except on privilege grounds not
27 addressed by this Order, no party may withhold information from discovery on the ground that it
28 requires protection greater than that afforded by this Order unless the party moves for an order

1 providing such special protection.

2 **9. Challenges by a Party to Designation as Confidential Information.** The designation
3 of any material or document as Confidential Information is subject to challenge by any party. The
4 following procedure shall apply to any such challenge.

5 **a. Meet and Confer.** A party challenging the designation of Confidential Information
6 must do so in good faith and must begin the process by conferring directly with counsel for the
7 designating party. In conferring, the challenging party must explain the basis for its belief that the
8 confidentiality designation was not proper and must give the designating party an opportunity to
9 review the designated material, to reconsider the designation, and, if no change in designation is
10 offered, to explain the basis for the designation. The designating party must respond to the challenge
11 within five (5) business days.

12 **b. Judicial Intervention.** A party that elects to challenge a confidentiality designation
13 may file and serve a motion that identifies the challenged material and sets forth in detail the basis for
14 the challenge. Each such motion must be accompanied by a competent declaration that affirms that the
15 movant has complied with the meet and confer requirements of this procedure. The burden of
16 persuasion in any such challenge proceeding shall be on the designating party. Until the Court rules on
17 the challenge, all parties shall continue to treat the materials as Confidential Information under the
18 terms of this Order.

19 **10. Action by the Court.** Applications to the Court for an order relating to materials or
20 documents designated Confidential Information shall be by motion. Nothing in this Order or any
21 action or agreement of a party under this Order limits the Court's power to make orders concerning the
22 disclosure of documents produced in discovery or at trial.

23 **11. Use of Confidential Documents or Information at Trial.** Nothing in this Order shall
24 be construed to affect the use of any document, material, or information at any trial or hearing. A party
25 that intends to present or that anticipates that another party may present Confidential information at a
26 hearing or trial shall bring that issue to the Court's and parties' attention by motion or in a pretrial
27 memorandum without disclosing the Confidential Information. The Court may thereafter make such
28 orders as are necessary to govern the use of such documents or information at trial.

1 **12. Confidential Information Subpoenaed or Ordered Produced in Other
2 Litigation.**

3 **a.** If a receiving party is served with a subpoena or an order issued in other litigation that
4 would compel disclosure of any material or document designated in this action as Confidential
5 Information, the receiving party must so notify the designating party, in writing, immediately and in
6 no event more than three court days after receiving the subpoena or order. Such notification must
7 include a copy of the subpoena or court order.

8 **b.** The receiving party also must immediately inform in writing the party who caused the
9 subpoena or order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is the subject of this Order. In addition, the receiving party must deliver a copy of
11 this Order promptly to the party in the other action that caused the subpoena to issue.

12 **c.** The purpose of imposing these duties is to alert the interested persons to the existence
13 of this Order and to afford the designating party in this case an opportunity to try to protect its
14 Confidential Information in the court from which the subpoena or order issued. The designating party
15 shall bear the burden and the expense of seeking protection in that court of its Confidential
16 Information, and nothing in these provisions should be construed as authorizing or encouraging a
17 receiving party in this action to disobey a lawful directive from another court. The obligations set forth
18 in this paragraph remain in effect while the party has in its possession, custody or control Confidential
19 Information by the other party to this case.

20 **13. Challenges by Members of the Public to Sealing Orders.** A party or interested
21 member of the public has a right to challenge the sealing of particular documents that have been filed
22 under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety
23 of filing under seal.

24 **14. Obligations on Conclusion of Litigation.**

25 **a. Order Continues in Force.** Unless otherwise agreed or ordered, this Order shall
26 remain in force after dismissal or entry of final judgment not subject to further appeal.

27 **b. Obligations at Conclusion of Litigation.** Within sixty-three days after dismissal or
28 entry of final judgment not subject to further appeal, all Confidential Information and documents

1 marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" under this Order, including
2 copies as defined in ¶ 3(a), shall be returned to the producing party unless: (1) the document has been
3 offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to
4 the extent practicable in lieu of return; or (3) as to documents bearing the notations, summations, or
5 other mental impressions of the receiving party, that party elects to destroy the documents and certifies
6 to the producing party that it has done so.¹

7 **c. Retention of Work Product and one set of Filed Documents.** Notwithstanding the
8 above requirements to return or destroy documents, counsel may retain (1) attorney work product,
9 including an index that refers or relates to designated Confidential Information so long as that work
10 product does not duplicate verbatim substantial portions of Confidential Information, and (2) one
11 complete set of all documents filed with the Court including those filed under seal. Any retained
12 Confidential Information shall continue to be protected under this Order. An attorney may use his or
13 her work product in subsequent litigation, provided that its use does not disclose or use Confidential
14 Information.

15 **d. Deletion of Documents filed under Seal from Electronic Case Filing (ECF) System.**
16 Filings under seal shall be deleted from the ECF system only upon order of the Court.

17 **15. Order Subject to Modification.** This Order shall be subject to modification by the
18 Court on its own initiative or on motion of a party or any other person with standing concerning the
19 subject matter.

20 **16. No Prior Judicial Determination.** This Order is entered based on the representations
21 and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be
22 construed or presented as a judicial determination that any document or material designated
23 Confidential Information by counsel or the parties is entitled to protection under Rule 26(c) of the
24 Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific

26 ¹ The parties may choose to agree that the receiving party shall destroy documents containing
27 Confidential Information and certify the fact of destruction, and that the receiving party shall not be
28 required to locate, isolate and return e-mails (including attachments to e-mails) that may include
Confidential Information, or Confidential Information contained in deposition transcripts or drafts or
final expert reports.

document or issue.

17. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

SO STIPULATED.

DATED: April 26, 2022

ROSSI VUCINOVICH PC

/s/ James K. Vucinovich

By _____
JAMES K. VUCINOVICH
C. N. COBY COHEN
Attorneys for plaintiff,
DAVID M. KRAM

DATED: April 26, 2022

FLESHER SCHAFF & SCHROEDER, INC.

/s/ Jeremy J. Schroeder

By JACOB D. FLESHER
Attorneys for defendant,
NATIONAL RAILROAD PASSENGER
CORPORATION

ORDER

The court has reviewed the parties' stipulated protective order, and finds it comports with the relevant authorities and the court's applicable local rule, though only barely. See L.R. 141.1(c)²; see also Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) ("Generally, the public can gain access to litigation documents and information produced during

² The Court's Local Rules instruct the parties, when requesting a protective order, to include in their submission:

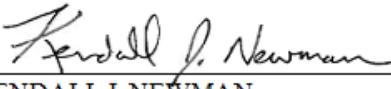
- (1) A description of the types of information eligible for protection under the order, with the description provided in general terms sufficient to reveal the nature of the information (e.g., customer list, formula for soda, diary of a troubled child);
 - (2) A showing of particularized need for protection as to each category of information proposed to be covered by the order; and
 - (3) A showing as to why the need for protection should be addressed by a court order, as opposed to a private agreement between or among the parties.

Local Rule 141.1(c)

1 discovery unless the party opposing disclosure shows ‘good cause’ why a protective order is
2 necessary.”). Therefore, the court APPROVES the protective order subject to the following
3 clarification.

4 As provided in this court’s Local Rules, once this action is closed, “unless otherwise ordered,
5 the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that
6 action.” L.R. 141.1(f). Courts in the district generally do not agree to retain jurisdiction for disputes
7 concerning protective orders after closure of the case. See, e.g., MD Helicopters, Inc. v. Aerometals,
Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017).

9
10 Dated: April 29, 2022

11 
12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE